

(1980) 07 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8338 of 1979

Rashid Jameel and others

APPELLANT

Vs

Fourth Addl.District judge, Saharanpur and others

RESPONDENT

Date of Decision : 09-07-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 67
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106, 109
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3

Citation : (1980) 07 AHC CK 0041

Hon'ble Judges : A.N.Varma, J

Final Decision : Disposed Of

Judgement

A. N. Verma, J.

This is a landlord's petition. It is directed against a judgment and order passed by the learned IV Additional District Judge, Saharanpur allowing a revision filed by the respondents No. 2 to 5 under Section 25 of the Provincial Small Causes Courts Act and dismissing the suit filed by the petitioner against the aforesaid respondents for ejection from an accommodation.

Shortly stated the plaint case was as follows:

The petitioners were the landlords and Wahid Husain (defendant No. 1) was the tenant of the accommodation on a monthly rental of Rs. 11.25 P. The defendant No. 1 had illegally sublet the house to defendants Nos. 2 to 4 (respondents Nos. 3 to 5 in this petition. Besides the defendants had caused material alterations and substantial damage to the building under tenancy. Consequently, the petitioner determined the tenancy of defendant No 1 under Section 106 of the Transfer of Property Act. The plaintiffs had also obtained the permission to file a suit against the defendants under Section 3 of the U. P. Act No. III of 1947. Against the order of the learned District Magistrate granting permission, the defendant No. 1 filed a

revision which was dismissed, However, the revision filed by defendant No. 4 against the order granting permission was allowed and the permission was revoked. Since the order of revocation had not been passed at the instance of defendant No. 1, the permission granted against defendant No. 1 remain effective and valid. As the defendants had not vacated the accommodation despite the determination of the tenancy of defendant No. 1 they were liable to be evicted.

The suit was resisted by the defendants who pleaded that it was their father Abrar Hussain who was originally the tenant of the accommodation in dispute. Upon his death, in the year 1950, his sons, defendants Nos. 1 to 4 became the tenants. It was incorrect to say that defendant No. 1 alone was the tenant. Defendant No. 1 had not sublet the accommodation to the other defendant. The defendants had not caused any material alterations or substantial damage to the building under their tenancy. The notice given by the plaintiffs under Section 106 of the Transfer of Property Act was invalid. The permission granted to the plaintiffs under Section 3 of U. P. Act No. III of 1947 having been set aside, there was in existence no valid permission. The suit was liable to be dismissed.

On the pleadings of the parties, the trial Court framed relevant issues. It held that the defendant No. 1 and not his father was a tenant of the accommodation. The defendant No. 1 had sublet the accommodation to defendants No. 2 to 4. The defendants had also made material alterations and caused substantial damage to building by their various acts. The notice under Section 106 of the Transfer of Property Act was valid. On these findings, the trial Court decreed the suit.

In the revision filed by the tenants, the learned District Judge has held that there was no evidence on the record to show that the defendant No. 1 had sublet the accommodation to defendants Nos. 2 to 4. In regard to the pleas of material alterations and substantial damage to the buildings under tenancy, the finding of the learned District Judge is that so far as the alterations and alleged acts of damage said to have been caused to the building which took place prior to the purchase of the property by the present plaintiff in the year 1967 are concerned, the same cannot be taken into account as the predecessor's interest of the plaintiffs alone could file a suit on those grounds. As regards the constructions said to have been made after the purchase of the property by the present plaintiff, the learned District Judge has held that the same did not amount to material alterations or substantial damage to the building. The learned District Judge, as a consequence of the findings mentioned above, allowed the revision and dismissed the suit of the petitioners.

Sri Rajeshwari Prasad, learned counsel for the petitioner first submitted that the finding of the trial Court on the question whether the defendant No. 1 had sublet the accommodation to the defendants Nos. 2 to 4 could not be set aside by the revisional Court having regard to the scope of Section 25 of the Provincial Small Causes Courts Act. I cannot agree. The question whether the defendant No. 1

had sublet the accommodation in dispute to the defendants Nos. 2 to 4 was not a pure question of fact. It is a mixed question of law and fact. Whether on the facts found by the Courts below, the defendant No. 1 could be said to have sublet the accommodation in dispute to the defendant Nos. 2 to 4 is a matter of legal inference which is to be drawn on the basis of the principles which have been laid down in various judicial decisions as regards what constitutes subletting of an accommodation. Furthermore, the learned District Judge has set aside the finding of the trial Court on the ground that there was no evidence on the record that the defendant No. 1 had sublet the accommodation in dispute to the defendants Nos. 2 to 4. On that ground the finding of the trial Court was certainly liable to be set aside. Besides, this the learned District Judge also found that the defendants Nos. 2 to 4 had been residing in the houses in dispute with the defendant No. 1 right from the beginning of the tenancy which admittedly commenced in 1930 or thereabout i. e. before 1946. The subtenancy, if any, therefore, had taken place prior to 1946 and it could not, therefore, be a ground for eviction under Section 3 of U. P. Act No. III of 1947. I, therefore, find no substance in the first point.

Learned Counsel for the petitioners next contended that the view of the learned District Judge that the material alterations or acts of substantial damage which had taken place and were committed prior to the purchase of the property by the plaintiffs, could not be looked into, is manifestly erroneous in law. In support, learned counsel placed reliance on a decision of this Court in *R. M. Gupta v. S. C. Agarwal*, (1973 A.L.J. 722). Having heard learned counsel for the petitioner his contention is wellfounded. In *R. M. Gupta v. S. C. Agarwal* (supra), a learned Judge of this Court held that the right acquired by the previous landlords on account of the material alterations made by the tenant in the building under tenancy was not a personal right and that upon the transfer of the accommodation made in favour of the plaintiff, the latter would have the right to avail of the right which had accrued to his predecessor namely, to file a suit on the basis of the material alterations made while the property was owned by the predecessor of the plaintiff. The decision is founded upon the provision of Section 109 of the Transfer of Property Act and upon the ground that such right was not a personal right but a right which ran with the property. I am in respectful agreement with the above decision. It fully covers the controversy before me. The learned District Judge, therefore, fell into a patent error of law in disregarding the material alterations and alleged acts of substantial damages said to have been caused to the building during the period when the property belonged to the predecessors in interest of the present plaintiffs.

Learned counsel for the respondent tried to meet the above argument on the ground that the suit filed by the present plaintiff in regard to the acts of material alterations and substantial damage said to have been committed in the year 1965 would be clearly barred by time as the matter would be governed by Article 113 of the Limitation Act. The submission was that the cause of action for the suit would be deemed to have arisen in the year 1965 when the defendants are

said to have made the material alterations and caused substantial damage, inasmuch as, the suit was filed more than three years after the accrual of the said causes of action. The argument is misconceived. The aforesaid article of the Limitation Act does not apply. The suit is governed by Article 67 of the Limitation Act. It being a suit by the landlord for possession, after determining the tenancy of the tenant, the period of limitation being 12 years, the suit is clearly within time. I may add that the plea of Limitation advanced by the learned counsel for the respondent was not taken in either of the two Courts below. In any case, as found above, the said plea has no substance. The finding of the learned District Judge on the issue of material alterations and substantial damage to the building in regard to the constructions made prior to the purchase of the property by the plaintiffs has, therefore, be set aside. I however, find that the learned District Judge has not considered the further questions whether the acts complained of do amount to material alterations or substantial damage to the building as contemplated by law. Presumably because of the view of law which he took as to the right of the petitioners to file a suit in respect of the Act committed while the property belonged to the predecessors of the plaintiff. The learned District Judge should, therefore, reconsider the issue relating to material alterations and substantial damage to the building and find out whether on the facts of this case, the defendants did cause material alterations or substantial damage to the building. As regards whether the constructions made after the purchase of the property by the plaintiffs amounted to material alterations or substantial damage, I find that the learned District Judge has not considered the question in any depth or with reference to the principles which have been laid down for determining whether the changes and alterations made in the building amount to material alterations or substantial damage. Learned counsel for the petitioners placed reliance on a Full Bench decision of this Court in Sita Ram "Sharan v. Jauhari Mai (1973 A.L.J. 722), and on its basis urged that the various constructions made by the tenants amounted to material alterations as well as substantial damages. Since I am remanding the case to the learned District Judge for a reconsideration of the issue, I am expressing no opinion on this argument. The learned District Judge, while reconsidering the matter, may keep in mind the decision cited by the learned counsel for the petitioner as well as other decisions rendered by this Court and other Courts bearing upon the issue.

In view of what has been stated above, this petition succeeds and is allowed. The order passed by the learned IV Additional District Judge dated 28/7/1976 is quashed. The case is remanded to the learned District Judge, Saharanpur for disposing of the tenant's revision in accordance with law, having regard to the observations made in this judgment. The learned District Judge will try and dispose of the revision expeditiously. There will be no orders as to costs.